

This application under Section 308 (1) Cr.P.C. has been filed by the State represented by the C.B.I. for grant of sanction for prosecution of Sri S.C. Ghosh for tendering false evidence in Special Case No. 2(c)/96 before the learned Special Judge, Assam at Guwahati.

2. On completion of investigation in Case No. RC 2(A)/94 ACU-III, the C.B.I. filed chargesheet against respondent Subhash Chandra Ghosh and 24 others under Section 120 B, 467, 468, 471, 477-A, 511 read with Section 420 IPC and under Section 13(2) & 13(1)(d) of the P.C. Act, 1988 before the Special Judge, Assam. The respondent was working as Store Keeper at District Veterinary Office, Goalpara where C.B.I detected fraudulent withdrawal of Rs. 3,21,19,380/-. The respondent expressed his desire for making full and true disclosure of the circumstances as to the criminal conspiracy and to the false and fraudulent use of medical bills leading to the withdrawal of the aforesaid amount. His confessional statement to that effect was recorded by the learned Magistrate. The learned Special Judge vide order dated 17.4.96 granted him pardon under Section 5(2) of the P.C. Act. The respondent was cited as a prosecution witness in the chargesheet. He was examined as P.W.10. During the course of his evidence, he willfully concealed the material facts and failed to make true disclosure of the circumstances leading to the fraudulent withdrawal and deposed contrary to the confessional statement recorded under Section 164 Cr.P.C. He was declared hostile by the learned Public Prosecutor. The learned Special Judge also allowed the prayer of the C.B.I. for initiation of a proceedings against him under Section 193 I.P.C. Section 308 CrP.C. provides for trial of a person not complying with the conditions of pardon. The proviso to Section 308 requires that such a person shall not be tried for the offence of giving false evidence except with the sanction of the High Court and nothing contained in Section 195 of Section 340 shall apply to that offence. In view of this provision, the C.B.I has filed this case praying for sanction for prosecution of the respondent under Section 193 I.P.C.

3. Heard Mr. D.K. Das, learned Standing Counsel for the C.B.I and Mr A.K. Bhattacharyya, learned senior counsel for the respondent.

4. Mr. Das, learned Standing Counsel, CBI submitted that except the confessional statement recorded by the Magistrate, no other statement has been recorded under Section 164 Cr.P.C. or any other provisions of law. Mr Das submitted that the confessional statement recorded under Section 164 Cr.P.C. shall be used as an evidence against the respondent in the proceedings under Section 193 IPC.

5. Mr. Bhattacharyya, learned senior counsel on the other hand argued that the confessional statement recorded long before tender of pardon could not be used as an evidence against the respondent. According to Mr. Bhattacharyya, any statement recorded by a Magistrate under Section 164 Cr.P.C. or by a Court under sub-section (4) of Section 306 may be used as evidence against the respondent. Mr. Bhattacharyya continued that the provisions of sub-section (2) of Section 308 Cr.P.C. do not provide for use of a confessional statement recorded without oath as evidence in a proceeding under Section 193 IPC.

6. There is no dispute that except the confessional statement, no other statement of the respondent has been recorded under Section 164 or under sub-section (4) of Section 306 CrP.C. Section 164 Cr.P.C. contemplates recording of confessions and statements in course of an investigation. The provisions incorporated therein clearly contemplate two types of statements (i) confessional statement, and (ii) other statement made in course of investigation. The provisions of sub-section (2) of Section 308 Cr.P.C. provide for use of a statement record

ed under Section 164 as evidence at a trial for the offence of giving false evidence and obviously, not a confessional statement. Therefore, the provisions of Section 164 and Section 308 (2) Cr.P.C. read together lead to the conclusion that a confessional statement recorded under Section 164 Cr.P.C. is of no consequence in a proceeding initiated under Section 193 IPC. In fact, there appears to be no statement made by the respondent during the course of investigation which could be used in the proceeding for giving false evidence. The confessional statement made by the respondent may be used against him as evidence if he is proceeded against in the case and not otherwise. Where a person who has accepted a tender of pardon fails to comply with the conditions on which pardon was so tendered, he may be-i) prosecuted for the offence for which pardon was tendered or for any other offence, ii) prosecuted for the offence of giving false evidence. So far the first category of cases are concerned, no sanction for prosecution is called for or required under the law or under Section 308 Cr.P.C. Sanction of the High Court is required only when such a person is sought to be prosecuted for giving false evidence. In the instant case, as stated above, there is no previous statement of the accused recorded on oath under Section 164 Cr.P.C. and, as such, no prima facie case for the offence of giving false evidence is made out by the C.B.I. Hence, we do not find any material to grant sanction for such prosecution. In fact, the charge will fall flat for want of statement recorded on oath under Section 164 Cr.P.C. For this reason, sanction, if any granted by this Court, would be of no consequence.

7. In the result, the petition is dismissed.